



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/142414

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on October 09, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Human Services (the agency) correctly determined that Petitioner was overpaid child care benefits in the amount of \$1745.68 from 07/11/10 to 09/30/10.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Darryl Caper

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On July 16, 2012, the agency sent Petitioner a Child Care (CC) Overpayment Notice dated July 16, 2012 indicating that she was overpaid childcare benefits in the amount of \$1745.68 for the period of 07/11/2010 to 09/30/2010. (Exhibit 4, pg. 7-8)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 18, 2012. (Exhibit 1)
4. During the summer of 2010, Petitioner enrolled her four children at B's Creative Learning Center, which was run by Bethany Baldwin. (Petitioner's testimony; Exhibit 4, pgs. 31 -61)

DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than he or she is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Child Care Manual (CM)*, §2.5.0. See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

A parent/caregiver is eligible for child care services if he/she needs the care to:

- Work in an unsubsidized job, including training provided by an employer during the hours of employment or parents needing child care for employment related activities.
- Work in Wisconsin Works (W-2) or Tribal TANF employment position, including participation in job search, orientation and training activities. The two year education time limit for child care recipients does not apply to W-2 participants attending education and training programs that are part of their written employability plan.
- **If one parent is in a qualifying activity and the other is not, eligibility will fail.** If one parent is in a qualifying activity and the other parent is unable to care for the child, due to a medical determination verified by a doctor, psychiatrist or psychologist, eligibility exists if all other financial and nonfinancial requirements are met.

CM, Chapter 1, §§ 1.5.0, et al., & 1.4.8.

In this case, the agency asserts that Petitioner received childcare benefits for times when she was not working.

The petitioner does not contest several things. First, she does not quarrel with the agency's arithmetic in the overpayment calculation, which is based upon times when the children were reported to be in daycare, but Petitioner was not working. Second, Petitioner agrees with the hours of her employment, as described by her employer in Exhibit 4, pgs. 15-29. Third, there is also no dispute that the Child Care program made payments to the daycare provider from July 11, 2010 through September 30, 2010. However, it is Petitioner's contention that the daycare facility, inaccurately recorded information on the sign-in/ sign-out sheets without her consent.

Petitioner testified that she enrolled the children in daycare in June 2010, but pulled them out of daycare in mid-July 2010. Although Petitioner verified that the signature on the sign-in/sign-out sheets was, in

fact, hers, she claims that she had signed blank forms for Ms. Baldwin, because Ms. Baldwin claimed to be behind in her paperwork. As such, Petitioner claims that the information in the sign-in/sign-out sheets is inaccurate. Petitioner's claims are completely self-serving and incredible.

First, Petitioner provided differing reasons for pulling her children out of childcare during the hearing. In one instance, she claimed that she didn't need the childcare because her older children were capable of caring for the younger children, but this begs the question of why enroll them in childcare at all then. Then, she claimed that she had family or fathers of her children to care for the kids. Then, she claimed that she pulled the children out of childcare because she had a disagreement with Ms. Baldwin about enrolling the children in the HeadStart program. Second, her claim that she just willy-nilly signed blank sign-in/sign out sheets makes even less sense, given her claim that she was having problems with Ms. Baldwin. Third, Petitioner's claim that she pulled the children out of child care in July is completely inconsistent with the agency's case comments which indicate that throughout July 2010, Petitioner was seeking out child care benefits. (Exhibit 5, pgs. 2-3)

Based upon the foregoing, it is found that Petitioner's claim that the overpayment occurred because of fraud on the provider's part is not credible.

Petitioner did later attempt to argue that some of the time she was not at work, she was commuting. However, this should not affect the overpayment calculation, since Petitioner claims the children were not in daycare at Ms. Baldwin's center during the overpayment period.

It should be noted that even if Petitioner did pull her children out of daycare, she conceded that she never reported it to the agency, a fact that is supported by the case comments, which indicate several contacts with Petitioner during the time in question, but no reports of a need to cease childcare payments. (See Exhibit 5, pgs. 2-3) Section 1.15.1 of the Child Care Manual, states that recipients of child benefits must report changes within 10 days. Because Petitioner failed to do this, she would still be liable for the overpayment.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was overpaid child care benefits in the amount of \$1745.68, for the period of 07/11/10 to 09/30/10.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

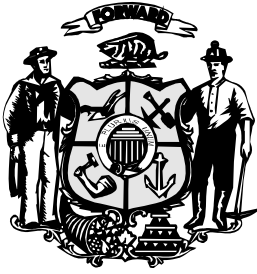
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of October, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU@ wisconsin.gov - DWSPACU@wisconsin.gov
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The preceding decision was sent to the following parties on October 18, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud